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DAVID JOSEPH SILVA

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Plaintiff,)	Case No.: 5:22-cv-1609
)	
DAVID JOSEPH SILVA)	
)	COMPLAINT FOR DAMAGES
Vs.)	
)	1. Fourth Amendment –
COUNTY OF SAN BERNARDINO,)	Excessive Force (42 U.S.C.
DEPUTY ROGER ALFARO, and)	1983)
DOES-10, Inclusive.)	2. Battery
Defendants.)	3. Negligence
)	4. Negligent Infliction of
)	Emotional Distress
)	5. Violation of Cal. Civil Code §
)	52.1
)	[DEMAND FOR JURY TRIAL]
)	
)	

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3 **JURISDICTION AND VENUE**
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5 1. This Court has original jurisdiction pursuant to 28 U.S.C. §§ 1331
6 and 1343(a)(3)-(4) because Plaintiff asserts claims arising under the laws of the
7 United States including 42 U.S.C. § 1983 and the Fourth and Fourteenth
8 Amendments of the United States Constitution. This Court has supplemental
9 jurisdiction over Plaintiff's claims arising under state law pursuant to 28 U.S.C. §
10 1367(a), because those claims are so related to the federal claims that they form
11 part of the same case or controversy under Article III of the United States
12 Constitution.
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16 2. Venue is proper in this Court under 28 U.S.C. § 1391(b) because
17 Defendants reside in this district and all incidents, events, and occurrences giving
18 rise to this action occurred in this district.
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20

21 **INTRODUCTION**
22

23 3. This civil rights and state tort action seeks compensatory and punitive
24 damages from Defendants for violating various rights under the United States
25 Constitution and state law in connection with this officer-involved shooting of
26 Plaintiff on July 28, 2021.
27
28

PARTIES

4. At all relevant times, **DAVID JOSEPH SILVA** ("PLAINTIFF") was an individual residing in the County of San Bernardino, California.

5. At all relevant times, Defendant **County of San Bernardino** ("COUNTY") is and was a municipal corporation existing under the laws of the State of California. COUNTY is a chartered subdivision of the State of California with the capacity to be sued. COUNTY is responsible for the actions, omissions, policies, procedures, practices, and customs of its various agents and agencies, including the San Bernardino Sheriff's Department ("SBSD") and its agents and employees.

6. At all relevant times, Defendant COUNTY was responsible for assuring that the actions, omissions, policies, procedures, practices, and customs of the and its employees and agents complied with the laws of the United States and of the State of California. At all relevant times, COUNTY was the employer of Defendants Deputy Roger Alfaro and DOES 1-10.

7. Defendant **DEPUTY ROGER ALFARO** ("ALFARO") is and was at all times herein mentioned a Deputy employed by Defendant COUNTY OF SAN BERNARDINO. He is being sued in his individual capacity and in his official capacity as a Deputy for the COUNTY.

8. On information and belief, DOES 1-10 were residents of the COUNTY of Colton, County of San Bernardino.

9. In doing the acts and failing and omitting to act as hereinafter

described, Defendants DOES 1-5 acting on the implied and actual permission and consent of Defendants COUNTY and DOES 6-10.

10. The true names and capacities, whether individual, corporate, association or otherwise of Defendants DOES 1-10, inclusive, are unknown to Plaintiff, who otherwise sues these Defendants by such fictitious names. Plaintiff will seek leave to amend this complaint to show the true names and capacity of these Defendants when they have been ascertained. Each of the fictitiously-named Defendants is responsible in some manner for the conduct or liabilities alleged herein.

11. At all times mentioned herein, each and every defendant was the agent of each and every other defendant and had the legal duty to oversee and supervise the hiring, conduct, and employment of each and every defendant.

12. All of the acts complained of herein by Plaintiff against Defendants were done and performed by said Defendants by and through their authorized agents, servants, and/or employees, all of whom at all relevant times herein were acting within the course, purpose, and scope of said agency, service, and/or employment capacity. Moreover, Defendants and their agents ratified all of the acts complained of herein.

FACTS COMMON TO ALL CLAIMS FOR RELIEF

13. Plaintiff repeats and re-alleges each and every allegation in

1 paragraphs 1 through 12 of this Complaint with the same force and effect as if
2 fully set forth herein.
3

4 14. This incident occurred on July 28, 2021 at approximately 8:30p.m.
5 p.m. in the COUNTY of SAN BERNARDINO.
6

7 15. Plaintiff DAVID SILVA was operating a vehicle in the County of San
8 Bernardino at approximately 8:30 p.m. on July 28, 2021, when Defendant Deputy
9 ALFARO activated his emergency lights to conduct a traffic stop on Plaintiff
10 SILVA.
11

12 16. Plaintiff SILVA did not yield to the traffic stop. A pursuit ensued with
13 Defendant Deputy ALFARO chasing Plaintiff SILVA approximately three miles.
14

15 17. Plaintiff SILVA crashed the vehicle that he was operating into a utility pole
16 at the intersection of Fairway Ave. and Sperry Drive, in the city of Colton, County
17 of San Bernardino.
18

19 18. The collision with the utility pole immobilized the vehicle. The vehicle
20 never moved and Plaintiff SILVA was inside the vehicle.
21

22 19. Defendant Deputy ALFARO immediately started shooting his service
23 weapon at SILVA who was inside the immobilized vehicle. ALFARO decided to
24 use deadly force. Plaintiff SILVA posed no danger to Defendant ALFARO.
25 ALFARO did not evaluate the situation, he just started shooting.
26

27 20. Based upon information and belief, ALFARO did not assess the situation,
28 he began to shoot. No warning, no attempt to deescalate the situation, no

1 immediate danger, ALFARO used deadly force.

2 21. ALFARO did not give commands or notice that he was going to shoot
3
4 SILVA. ALFARO did not seek cover. ALFARO, nor did he see any weapon that
5 would indicate that ALFARO was in danger.

6 22. The instantaneous firing of his weapon resulted in SILVA being shot in the
7
8 foot. ALFARO's bullet was lodged in SILVA's right foot. It is believed entered
9 the back of SIVA's ankle, fractured his Tibia, along with multiple bones it stopped
10 near the top pod SILVA's foot.

11
12 23. PLAINTIFF has had two or three surgeries and it is believed future
13 surgeries will be necessary.

14
15 **FIRST CLAIM FOR RELIEF**

16 **Fourth Amendment —Excessive Force (42 U.S.C. § 1983)**
17 **(Against Defendants Plaintiff Against ALFARO and Does 1-10)**

18 24. Plaintiff repeats and re-alleges each and every allegation in
19 paragraphs 1 through 23 of this Complaint with the same force and effect as if fully
20 set forth herein.

21
22 25. Defendants Deputy ALFARO used excessive force against
23 PLAINTIFF when he shot him. ALFARO's unjustified use of force deprived
24 PLAINTIFF of his right to be secure in his person against unreasonable searches
25 and seizures as guaranteed to PLAINTIFF under the Fourth Amendment to the
26 United States Constitution and applied to state actors by the Fourteenth
27
28

1 Amendment.

2 26. Defendant ALFARO acted under color of law.

3
4 27. As a result of the foregoing, PLAINTIFF suffered great physical pain
5 and emotional distress, loss of use of his right ankle and foot, and loss of his
6 earning capacity.
7

8 28. The conduct of Defendants was willful, wanton, malicious, and done with
9 reckless disregard for the rights and safety of PLAINTIFF, and therefore warrants
10 the imposition of exemplary and punitive damages as to Defendant ALFARO.
11

12 29. The shooting was excessive and unreasonable, and SILVA posed
13 no immediate threat of death or serious bodily injury at the time of the shooting.
14 Further, Defendants ALFARO's shooting and use of force violated their training
15 and standard police officer training.
16

17 30. PLAINTIFF brings this claim suffering, emotional distress, loss of use of
18 his hand, loss of the use of his hand, and loss of enjoyment of life, for the violation
19 of PLAINTIFF's rights. PLAINTIFF also seeks attorney's fees under this claim.
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24 **SECOND CLAIM FOR RELIEF**
25 **Battery**
26 (Against Defendants ALFARO and Does 1-10)

27 31. Plaintiff repeats and re-alleges each and every allegation in
28 paragraphs 1 through 30 of this Complaint with the same force and effect as if fully

1 set forth herein.

2 32. Named Defendants and DOE DEPUTIES 1-10, acting within the course and
3 scope of his duties, intentionally shot PLAINTIFF and used unreasonable and
4 excessive force against him. The use of excessive force on PLAINTIFF SILVA
5 was intentional battery. Plaintiff does suffer emotional injury after being shot by
6 Deputy ALFARO. As a result of the actions of Named Defendants ALFARO and
7 DOE DEPUTIES 1-10, PLAINTIFF suffered and continuous to suffer from his
8 injuries. Defendants DOE DEPUTIES had no legal justification for using force
9 against PLAINTIFF, and their use of force while carrying out their duties as
10 Deputies was an unreasonable and non-privileged use of force.
11

12 33. As a direct and proximate result of the conduct of Defendants DOE
13 DEPUTIES as alleged above, PLAINTIFF sustained permanent injuries and
14 endured pain and suffering and emotional harm.
15

16 34. COUNTY is vicariously liable for the wrongful acts of Defendants
17 ALFARO and DOES 1-10 pursuant to section 815.2(a) of the California
18 Government Code, which provides that a public entity is liable for the injuries
19 caused by its employees within the scope of the employment if the employee's act
20 would subject him or her to liability.
21

22 35. The conduct of Defendants DOE DEPUTIES was malicious, wanton,
23 oppressive, and accomplished with a conscious disregard for the rights of
24 PLAINTIFF and PLAINTIFF, entitling PLAINTIFF, individually and as to an
25

1 award of exemplary and punitive damages as to Individual Defendants ALFARO
2 and DOE DEPUTIES 1-10.
3

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5 **THIRD CLAIM FOR RELIEF**

6 **Negligence**

7 (Against all Defendants Including ALFARO)

8 36. Plaintiff repeats and re-alleges each and every allegation in
9 paragraphs 1 through 35 of this Complaint with the same force and effect as if fully
10 set forth herein.

11 37. Police DEPUTIES, including Defendants, have a duty to use reasonable
12 care to prevent harm or injury to others. This duty includes using appropriate
13 tactics, giving appropriate commands, giving warnings, and not using any force
14 unless necessary, using less than lethal options, and only using deadly force as a
15 last resort.
16

17 38. Named defendants and Does 1-10 breached this duty of care. Upon
18 information and belief, the actions and inactions of Defendants DOE DEPUTIES
19 1-5 and DOES 6-10 were negligent and reckless, including but not limited
20 to:
21

22 (a) the failure to properly and adequately assess the need to detain,
23 arrest, and use force or deadly force against PLAINTIFF;
24

25 (b) the negligent tactics and handling of the situation with
26 PLAINTIFF, including pre-shooting negligence;
27
28

1 (c) the negligent detention, arrest, and use of force, including deadly
2 force, against PLAINTIFF;

3
4 (d) the failure to provide prompt medical care to PLAINTIFF;

5 39. As a direct and proximate result of Defendants' conduct as alleged
6 above, and other undiscovered negligent conduct, PLAINTIFF suffered physical
7 pain and suffering. Also as a direct and proximate result of Defendants' conduct as
8 alleged above, PLAINTIFF suffered emotional distress and mental anguish.

9
10 40. COUNTY is vicariously liable for the wrongful acts of Defendants
11 ALFARO and DOE DEPUTIES pursuant to section 815.2(a) of the California
12 Government Code, which provides that a public entity is liable for the injuries
13 caused by its employees within the scope of the employment if the employee's act
14 would subject him or her to liability.
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19 **FOURTH CLAIM FOR RELIEF**
20 **(Negligent Infliction of Emotional Distress)**
21 **(Against ALFARO)**

22 41. Plaintiff repeats and re-alleges each and every allegation in paragraphs 1
23 through 40 of this Complaint with the same force and effect as if fully
24 set forth herein.

25
26 42. Defendant ALFARO breached his duty of care by using deadly force on
27 PLAINTIFF SILVA. PLAINTIFF SILVA sustained physical and emotional injury
28 by Defendant ALFARO using excessive force without provocation.

1 43. Defendant Deputy ALFARO's conduct was negligent.

2 44. Defendant Deputy ALFARO knew that shooting an unarmed and non-
3 threatening individual would cause emotional harm.
4

5 45. Plaintiff does suffer emotional injuries after being shot by Deputy ALFARO.

6 46. COUNTY is vicariously liable for the wrongful acts of Defendants
7 ALFARO and DOES 1-10 pursuant to section 815.2(a) of the California
8 Government Code, which provides that a public entity is liable for the injuries
9 caused by its employees within the scope of the employment if the employee's act
10 would subject him or her to liability.
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12

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14 **FIFTH CLAIM FOR RELIEF**
15 **(Violation of Cal. Civil Code § 52.1)**
16 **(Against all Defendant ALFARO)**

17 47. Plaintiff repeats and re-alleges each and every allegation in paragraphs 1
18 through 47 of this Complaint with the same force and effect as if fully
19 set forth herein.

20 48. California Civil Code, Section 52.1 (the Bane Act), prohibits any
21 person from using violent acts or threatening to commit violent acts in retaliation
22 against another person for exercising that person's constitutional rights.
23

24 49. Conduct that violates the Fourth Amendment violates the Bane Act.

25 50. On information and belief, Defendant ALFARO, representing the COUNTY
26 and acting within the course and scope of their duties, intentionally committed acts
27 of violence against PLAINTIFF, including shooting him without justification or
28

1 excuse, integrally participating in failing to intervene in the above violence and by
2 denying him necessary medical care. Defendants' actions thus deprived
3 PLAINTIFF of his right to be free from unreasonable searches and seizures and
4 excessive force under the Fourth Amendment.
5

6 51. On information and belief, Defendants also retaliated against PLAINTIFF in
7 response to his action of failing to stop/yield for a traffic stop.
8

9 52. On information and belief, Defendants intentionally and spitefully
10 committed the above acts to discourage PLAINTIFF from exercising his civil
11 rights, to retaliate against him for invoking such rights, or to prevent him from
12 exercising such rights, which he was fully entitled to enjoy.
13

14 53. On information and belief, PLAINTIFF reasonably believed and understood
15 that the violent acts committed by Defendants Deputy ALFARO were intended to
16 discourage him from exercising his civil rights, to retaliate against him for
17 invoking such rights, which PLAINTIFF was fully entitled to enjoy.
18

19 54. Defendant's above-described conduct, while acting within the course and
20 scope of their duties for the COUNTY, constituted interference, and attempted
21 interference, by threats, intimidation and coercion, with decedent's peaceable
22 exercise and enjoyment of rights secured by the Constitution and laws of the
23 United States and state of California, in violation of California Civil Code § 52.1.
24

25 55. The conduct of Defendants was a substantial factor in causing
26 PLAINTIFF'S harms, losses, injuries, and damages.
27
28

1 56. COUNTY OF SAN BERNARDINO is vicariously liable for the wrongful
2 acts of DEPUTY ALFARO pursuant to section 815.2(a) of the California
3 Government Code, which provides that a public entity is liable for the injuries
4 caused by its employees within the scope of employment if the employee's act
5 would subject him or her to liability.
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7
8 57. Defendants are vicariously liable under California Law and the doctrine of
9 *respondeat superior*.
10

11 58. The conduct of Defendants DOE DEPUTIES was malicious, wanton,
12 oppressive, and accomplished with a conscious disregard for PLAINTIFF's rights,
13 justifying an award of exemplary and punitive damages as to Defendants DOE
14 DEPUTIES.
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1 WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

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3 PRAYER FOR RELIEF

- 4
5 1. For general damages in a sum according to proof;
6 2. For special damages in a sum according to proof;
7 3. For Punitive damages (not as to COUNTY) in a sum according to
8 proof;
9 4. For reasonable attorneys' fees pursuant to 42 U.S.C. 1983 § 1983;
10 5. For statutory civil penalties
11 6. For cost of suit herein incurred; and
12 7. For such other and further relief as the Court deems just and proper.

13 Dated: 9/12/2022

LAW OFFICES OF JAMES S. TERRELL

14
15 /s/James S. Terrell

16 James S. Terrell
17 Attorney for Plaintiff

18 Dated: 9/12/2022

LAW OFFICES OF SHARON J. BRUNNER

19 /s/Sharon J. Brunner

20 Sharon J. Brunner
21 Attorney for Plaintiff
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DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury.

Dated: 9/12/2022

LAW OFFICES OF JAMES S. TERRELL

James S. Terrell

James S. Terrell
Attorney for Plaintiff

Dated: 9/12/2022

LAW OFFICES OF SHARON J. BRUNNER

/s/Sharon J. Brunner

Sharon J. Brunner
Attorney for Plaintiff